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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-680

13 **LINDA VIANN HAMLET**
a.k.a. LINDA VIANN-SMITH
14 **a.k.a. LINDA VIANN HAMLET-SMITH**
414 Nova Court
15 Ventura, CA 93003

A C C U S A T I O N

16 Registered Nurse License No. 475800

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On or about March 31, 1992, the Board of Registered Nursing (Board) issued
25 Registered Nurse License No. 475800 to Linda Viann Hamlet, also known as Linda Viann-Smith
26 and Linda Viann Hamlet-Smith (Respondent). The Registered Nurse License expired on
27 December 31, 2007, and has not been renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 4. Section 2764 provides, in pertinent part, that the expiration of a license shall not
5 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
6 to render a decision imposing discipline on the license. Under Section 2811, subdivision (b), the
7 Board may renew an expired license at any time within eight years after the expiration.

8 **STATUTORY PROVISIONS**

9 5. Section 490 states, in pertinent part:

10 "(a) In addition to any other action that a board is permitted to take against a licensee, a
11 board may suspend or revoke a license on the ground that the licensee has been convicted of a
12 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
13 or profession for which the license was issued.

14 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
15 discipline a licensee for conviction of a crime that is independent of the authority granted under
16 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
17 of the business or profession for which the licensee's license was issued.

18 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
19 conviction following a plea of nolo contendere. Any action that a board is permitted to take
20 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
21 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
22 made suspending the imposition of sentence, irrespective of a subsequent order under the
23 provisions of Section 1203.4 of the Penal Code."

24 6. Section 492 states:

25 "Notwithstanding any other provision of law, successful completion of any diversion
26 program under the Penal Code, or successful completion of an alcohol and drug problem
27 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
28 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2

1 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
2 division, from taking disciplinary action against a licensee or from denying a license for
3 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
4 record pertaining to an arrest.

5 "This section shall not be construed to apply to any drug diversion program operated by any
6 agency established under Division 2 (commencing with Section 500) of this code, or any
7 initiative act referred to in that division."

8 7. Section 2750 provides, in pertinent part, that the Board may discipline any licensee,
9 including a licensee holding a temporary or an inactive license, for any reason provided in Article
10 3 (commencing with section 2750) of the Nursing Practice Act.

11 8. Section 2761 states, in pertinent part:

12 "The board may take disciplinary action against a certified or licensed nurse or deny an
13 application for a certificate or license for any of the following:

14 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

15

16 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
17 functions, and duties of a registered nurse, in which event the record of the conviction shall be
18 conclusive evidence thereof."

19 9. Section 2762 states, in pertinent part:

20 "In addition to other acts constituting unprofessional conduct within the meaning of this
21 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
22 chapter to do any of the following:

23 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
24 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
25 administer to another, any controlled substance as defined in Division 10 (commencing with
26 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
27 defined in Section 4022.
28

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof."

10. Health and Safety Code section 11550, subdivision (a), states:

"No person shall use, or be under the influence of any controlled substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances."

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444 states, in pertinent part:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.”

COST RECOVERY

12. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

1 enforcement of the case. Section 125.3 does not preclude a board from including the recovery of
2 the costs of investigation and enforcement of a case in any stipulated settlement.

3 13. **CONTROLLED SUBSTANCE**

4 a. "Marijuana" is a schedule I controlled substance as designated in Health and Safety
5 Code section 11054, subdivision (d)(13) and is categorized a dangerous drug pursuant to section
6 4022.

7 b. "Methamphetamine" is a Schedule II controlled substance as designated by Health
8 and Safety Code section 11055, subdivision (d)(2) and is categorized as a dangerous drug
9 pursuant to section 4022.

10 c. "Valium" is a Schedule IV controlled substance as designated by Health and Safety
11 Code section 11057, subdivision (d)(9) and is categorized as a dangerous drug pursuant to section
12 4022.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Conviction of a Substantially Related Crime)**

15 14. Respondent is subject to disciplinary action under section 2761, subdivision (f) and
16 490, as defined in California Code of Regulations, section 1444, in that Respondent has been
17 convicted of a crime substantially related to the qualifications, functions, or duties of a registered
18 nurse, as follows:

19 a. On or about October 11, 2011, after pleading nolo contendere, Respondent was
20 convicted of one misdemeanor count of violating Health and Safety Code section 11550,
21 subdivision (a) [under the influence of a controlled substance] in the criminal proceeding entitled
22 *The People of the State of California v. Linda Viann Hamlet* (Super. Ct. Ventura County, 2011,
23 No. 2011020572). The court placed Respondent to 36 months probation pursuant to Penal Code
24 section 1210.1 (Prop. 36).

25 b. The circumstances surrounding the conviction are that on or about June 7, 2011
26 during an investigation by the Ventura County Sheriff's Department, Respondent was contacted.
27 Ventura County deputy sheriffs stopped the vehicle that Respondent was driving to arrest her
28 passenger for outstanding warrants. While speaking to Respondent the officer observed her to

1 have "dry mouth", rapid speech, and a substantial amount of sweat on her forehead despite the
2 cold weather. When asked if she had been using any controlled substances, Respondent admitted
3 to smoking Marijuana the previous evening. Respondent later admitted to smoking a "bowl" of
4 "Meth" two days prior. She also indicated that she has been using methamphetamines off and on
5 for the past ten years.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Possession of a Controlled Substance)**

8 15. Respondent is subject to disciplinary action under section 2761, subdivision (a), as
9 defined in section 2762, subdivision (a), on the grounds of unprofessional conduct, in that
10 Respondent was found to be in possession of a controlled substance, as follows:

11 a. On or about December 15, 2009, during a traffic stop, by the Ventura Police
12 Department, Respondent was contacted. Respondent consented to a search and was found to be
13 in possession of Methamphetamine. Respondent was arrested for violating Health and Safety
14 Code section 11377, subdivision (a) [possession of a controlled substance, methamphetamine].
15 On or about December 17, 2009, a criminal case was filed against Respondent, charging her with
16 one felony count of violating Health and Safety Code Section 11377, subdivision (a) [unlawful
17 possession of a controlled substance, methamphetamine] in the criminal proceeding entitled *The*
18 *People of the State of California v. Linda Viann Hamlet* (Super. Ct. Ventura County, 2009, No.
19 2009045544). On or about April 20, 2010, the case was dismissed.

20 b. On or about November 26, 2000, during an investigation by the Ventura Police
21 Department, Respondent was contacted. During a search of her purse, the officers found a
22 Cocaine kit and several prescription pills. Respondent admitted to having Valium in her purse
23 that she had been taking, she indicated that she had received it from her father and did not have a
24 valid prescription for it. Respondent was subsequently arrested for violating Health and Safety
25 Code section 11364 [unlawful possession of controlled substance paraphernalia] and Business
26 and Professions Code section 4060 [possession of a controlled substance without a prescription].
27 On or about December 26, 2000, a criminal case was filed against Respondent, charging her with
28 one misdemeanor count of violating Health and Safety Code Section 11364 [unlawful possession

1 of controlled substance paraphernalia] and one misdemeanor count of Business and Professions
2 Code section 4060 [possession of a controlled substance without a prescription] in the criminal
3 proceeding entitled *The People of the State of California v. Linda Viann Hamlet* (Super. Ct.
4 Ventura County, 2000, No. 2000107563). On or about January 5, 2001, Respondent pled guilty to
5 one misdemeanor count of violating Health and Safety Code Section 11364 [unlawful possession
6 of controlled substance paraphernalia], and the Court placed Respondent on deferred entry of
7 judgment for 24 months. On or about December 5, 2002, the case was dismissed pursuant to
8 Penal Code section 1000 after Respondent successfully completed the deferred entry of judgment
9 program.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Use/Under the Influence of a Controlled Substance)**

12 16. Respondent is subject to disciplinary action under section 2761, subdivision (a), as
13 defined in section 2762, subdivision (b), for violating Health and Safety Code section 11550,
14 subdivision (a), in that on or about June 7, 2011 and November 26, 2000, Respondent by her own
15 admission, used and/or was under the influence of a controlled substance without a prescription.
16 Complainant refers to, and by this reference incorporates, the allegations set forth above in
17 paragraph 14 and paragraph 15, subparagraph (b), inclusive, as though set forth fully

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Conviction Involving the Use of a Controlled Substance)**

20 17. Respondent is subject to disciplinary action under section 2761, subdivision (a), as
21 defined in section 2762, subdivision (c), on the grounds of unprofessional conduct, in that on or
22 about October 11, 2011, Respondent was convicted of a crime involving the use of a controlled
23 substance. Complainant refers to, and by this reference incorporates, the allegations set forth
24 above in paragraph 14, as though set forth fully.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Registered Nurse License No. 475800, issued to Linda Viann Hamlet, also known as Linda Viann-Smith and Linda Viann Hamlet-Smith;
2. Ordering Linda Viann Hamlet, also known as Linda Viann-Smith and Linda Viann Hamlet-Smith to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: February 27, 2013 for Stacie Ben
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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